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IN THE

Supreme Court of the United States

October Term, 1952

No. 93

MARGARET TRIMBLE REVEDIN,
Petitioner,

against

DEAN G. ACHESON, Secretary of State of the United States, and UNITED STATES TRUST COMPANY OF NEW YORK,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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... PRESS, INC., 54 LAFAYETTE ST., NEW YORK 13 — WA. 5-8432-3.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The following comments concerning the government's brief in opposition to petitioner's application for a writ of certiorari in this matter are respectfully submitted.

I

As to the Government's Claim that Petitioner Did Acquire Italian Citizenship (pp. 14-18)

It is conceded that the paper work in connection with petitioner's alleged naturalization was regular on its face; and it is conceded that if what the government's Exhibit E[1] recited had taken place, had in fact taken place, petitioner would thereupon have acquired Italian nationality.

The fact is, however, that none of these things did take place; petitioner was given no warning of the religious and moral importance of her acts; to the best of her recollection, petitioner spoke no words; and no sworn interpreter was present for the administration of an oath. So petitioner testified, and the government failed to call any witness to contradict her.[2]

By like uncontradicted testimony, Luigi Dionisi, a member of the Italian bar, testified that, under the Italian law, these three omissions were fatal to the validity of the "oath"—that it was not voidable but a nullity.[3] (Pl. Ex. 6, Tr. p. 87; Pl. Ex. 7, Tr. p. 90)

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[1] The Italian document signed by petitioner at the Italian Consulate.

[2] The government was given a copy of its Exhibit E at petitioner's examination before trial which was held more than a year before the trial, and thus had ample opportunity to call the representatives of the Italian Consulate who subscribed this document to contradict the petitioner had it chosen to do so. Whether either of these men was questioned by the government, we do not know. We do know that neither of them was called on the trial, nor were any steps taken to take their depositions.

[3] Dionisi's previous statement referred to in footnote 12 of the government's brief that there was merely a "serious doubt" as to whether petitioner had acquired Italian citizenship, as appears in the affidavit in which it was made, was based on the assumption that what was stated in government's Exhibit E was true, and was thus in no wise inconsistent with his testimony on the trial.

The government now seeks to substitute for its lack of proof on these matters: (1) a presumption of regularity of acts of foreign officers; and (2) an inference from the fact that petitioner's husband was not expelled from the foreign service, that the Italian government must have waived the "irregularities".

In support of its first point, the presumption of regularity, the government cites as its sole authority a dictum of the Supreme Court (*United States* v. *King*, 3 How. 773)[4] in 1845 indicating the existence of such a rebuttable presumption (which the Court, in that case, found in fact rebutted) in the interest of protecting a citizen in his property rights. That presumption the government would now have this Court expand into a conclusive presumption rising above a native born citizen's sworn testimony for the purpose of expatriating her.

In support of its second point, the inference of fact, the government cites no authority but simply proceeds by conjecture, which conjecture even if it could be accepted as a substitute for proof, must fail when we consider, as pointed out by the government on page 17 of its brief, that the written record, presumably the only thing ever seen by the government in Rome, was regular on its face.

II

As to the Government's Claim that Petitioner Took an "Oath of Allegiance" to the King of Italy (pp. 18-22)

The only factual argument that the government makes on this point is as follows:

> "• • • It is highly improbable that petitioner, a competent adult, who knew that she had applied for Italian

[4] Sabin v. United States, 44 Fed. 2d 70 (Ct. Cl. 1930), the only other case cited on this point, relates to a United States officer and not a foreign official.

> citizenship and that the instrument she was signing was connected with acquiring the new nationality, *did not understand that she was swearing* 'to be faithful to the King of Italy, Emperor of Ethiopia' " (p. 18). (Emphasis ours.)

In that one sentence, it is submitted, lies the fallacy of the government's position for, while plaintiff has testified that, in holding up her right hand, she assumed she was *supposed* to be taking an oath, the point is that for one *in fact* to take a valid oath, as indicated above, far more than the simple raising of a hand is required.

The government's principal argument on this point is a legal one—that because the prescribed "oath of allegiance" was not expressly defined as having to be "in conformity with" the laws of the foreign state, no such requirement of legal validity could be imported into the statute.[5]

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[5] In addition, the government continues to rely on the 1940 Act, and the consequence that, even though what petitioner did fell short of being the "oath" proscribed by the 1907 Act, it was at least the "formal declaration" proscribed by the 1940 Act, but not mentioned in the 1907 Act. The answer to this argument is: (1) that the 1940 Act was not passed until well over a year after the acts here relied on had taken place; (2) that no statute will be given retroactive application unless such purpose plainly appears on its face (see **U. S. v. Magnolia Petroleum Co.**, 276 U. S. 160 (1928); **Brewster v. Gage**, 280 U. S. 327 (1930); **Claridge Apartments Co. v. Commissioner**, 323 U. S. 141, 164 (1944); and (3) that here the statute expressly indicated no retroactive effect. Section 347(a) of the Nationality Act of 1940 (8 U. S. C. A. 747(a)) provides that:

> "Nothing contained in * * * this chapter, unless otherwise provided therein, shall be construed to affect * * * any act, * * * done * * *, at the time this chapter shall take effect; but as to all such * * * acts * * * the statutes * * * repealed by this chapter, are hereby continued in force and effect."

cf. **Petro v. McGrath**, 188 F. 2d 978 (D. C. Cir. 1950).

But if the government's contention that an American citizen can thus be expatriated by **ex post facto** legislation is taken at all seriously, this, too, it is respectfully submitted, is a question needing review by this Court.

We believe that in this argument the government is wrong. It is our view that the legislature used the word "oath" in a legal rather than in a factual sense—as an act with some legal consequence; an act effectual to accomplish the result for which it was performed.

But be all this as it may, and assuming that the government's contention is correct in so far as legislative intent is concerned, that is that the statute was intended to proscribe acts or words falling short of legally valid oaths, the government in its brief fails to discuss at all the one point which we believe, above all others, requires review by this Court; that is, whether the statute, as so construed, would be valid, effectual and constitutional.

It is respectfully submitted that the petition for a writ of certiorari herein should be granted.

Dated, July 29, 1952.

Respectfully submitted,

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